

REMARKS/ARGUMENTS

Applicants would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicants regard as the invention.

Applicants respectfully request withdrawal of the finality of the present Office action. In accordance with MPEP 706.07(a), a second action on the merits shall NOT be final where the examiner introduces a new ground of rejection that is neither necessitated by applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). In the present Office action, the examiner introduced new grounds of rejection for claims 1-3, which were the originally filed claims, claim 4, which was merely amended to incorporate the limitations of dependent claim 5, and claim 6, which was merely amended to correct the dependency. Thus, the new grounds of rejection for claims 1-4 and 6 were not necessitated by any amendment. Further, the new grounds of rejection were not based on the supplemental information disclosure statement filed on January 26, 2004. Although, the addition of new claims 7-13 may have necessitated new ground(s) of rejection, the examiner provided new grounds of rejection for all pending claims 1-4 and 6-13; rather than for only the newly added claims 7-13. Thus, it is submitted that the finality of the present Office action is improper.

Claims 7-13 have been renumbered as claims 8-14 and claim 7 has been indicated as being withdrawn.

Claims 1-3 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Claim 1 has been amended herein to recite "a waterproof rib

formed of a soft material provided on the periphery of a joint surface of one of upper and lower cases..." Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-4 and 6-13 (now claims 1-4, 6, and 8-14) were rejected under 35 U.S.C. 102(b) as being anticipated by Otake (JP 6-268548). Traversal of this rejection is made for at least the following reasons. Otake does not disclose a waterproof rib having a quarter sphere shape, as recited in amended claim 1. Rather, Otake discloses a hemisphere shaped projection and a straight shaped projection on a periphery of the upper case.

Regarding claims 4 and 8, Otake does not disclose that a portion of a surface of the soft material is corrugated to facilitate shock absorption. The Examiner relies on elements 11 and 21 of Otake as being equivalent to the claimed soft material and on element 18 of Otake as being equivalent to the claimed portion of a surface of the soft material that is corrugated to facilitate shock absorption. However, reference numeral 18 of Otake is directed to buttons protruding from the upper cell phone case 10 (See Fig. 2) and through material 11. The buttons 18 are not a portion of the soft material 11 or the soft material 21 and further, the buttons 18 do not provide a corrugated surface portion to facilitate shock absorption.

Because Otake does not disclose each and every element set forth in claims 1-2, 4, 6, 8-10 and 13-14, Otake does not anticipate such claims. Claims 3, 11, and 12 have been cancelled herein. Withdrawal of this rejection is respectfully requested.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same

Appl. No. 09/719,454
Amdt. Dated September 3, 2004
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to our Deposit Account No. 16-0820, our Order No. 33193.

Respectfully submitted,

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